Civil Misc. App. No.275/1995
Dr.Mamta Lahori Sinha ***Versus Mohd. Ajij*** & Ors.

Date of Order ::: 21/07/06

Hon'ble Mr. Justice Ajay Rastogi

Mr. Sandeep Mathur for appellant (Claimant)
Mr. Ankur Mathur for Mr. V.Agrawal for respondents

Instant appeal has been filed for enhancement of compensation of Rs.50,000/- awarded by Motor Accident Claims Tribunal, Jaipur City vide Award dt.12/09/94 in MAC No. 133/89.

Appellant (claimant) who is resident of Gaya (Bihar) while accompanied by her husband and other relatives came to Jaipur on 21/10/88 and while going in a Tonga from Rajmandir Cinema towards railway station, met with an accident near All India Radio Office with Minibus RNB 1727 which was being driven rashly and negligently by its driver and sustained grievous injuries. At the time of accident, as alleged in claim petition, claimant was 41 years old serving as Medical Officer in Magadh Medical College, Gaya and getting monthly salary of Rs.3,000/- and further earning Rs.5,000/- from private medical practice. As observed in medical report (Ex.34/1), she remained hospitalized for a month in Neuro Surgery Department where she was surgically operated for head injury. After taking note of totality of facts, learned Tribunal awarded lump sum compensation of Rs.50,000/- along with 12% per annum from the date of claim petition (30/11/88). Hence this appeal.

Counsel for appellants submits that learned Tribunal proceeded to award lump sum compensation of Rs.50,000/- only on the premise that it was a case of

limited liability to the extent of Rs.50,000/- keeping in view nature of injuries found on the person of injured (claimant), but the fact is that offending vehicle was insured and third party risk was covered as is evident from insurance policy under which premium of Rs.240/- was paid which covered all kind of third party risk and for injuries sustained by her, what has been awarded taking note of accident took place on 21/10/88, is on much lower side and requires interference by this Court. In support of his contention, Counsel for appellant placed reliance on the decision of this Court in ***National Insurance Co. Ltd Vs. Laxmi (2005 ACJ 211)(DB) followed in National Insurance Co. Ltd Vs. Hastimal Lodha (2006 (1) WLC 666).***

On the other hand, Counsel for respondents supported impugned finding and contends that learned Tribunal has independently considered overall material and was not prejudice while expressing opinion with respect to limited liability and what has been awarded is in no manner related to limited liability.

I have considered contentions of Counsel for parties and with their assistance, examined material on record. As regards limited liability to insurer, there is no dispute that premium charged by insurer was in excess of "Act only policy" and was under heading B Liability to public risk', which was indicated at Rs.240/- along with other premium. Division Bench of this Court in ***National Insurance Co. Ltd Vs. Laxmi*** (supra), observed as under :

> "A perusal of aforesaid terms show that under principal clause, the

> insurance company accepted its liability towards third party injuries coextensive with legal liability of the owner of vehicle. By providing various clauses under provisos, it limited its liability to Act only liability in respect of matters covered by one or other of the provisos. Under none of the provisos, limit of liability towards bodily injury or death caused to a third party has been restricted to statutory liability though liability to indemnify passengers has been limited to statutory liability."

However, Division Bench of this Court affirmed the view of learned Single Judge that since a premium of Rs.240/- has been charged by the insurance company to cover the liability to public risk, which is higher than the "Act only", premium of Rs.200/-.

In view of decision rendered in ***Smt. Dropadi Devi Vs. Inder Kumar (1996(3) WLC 356), and New India Assurance Co, Pushpa Kakkar (1992(II) ACC 191)***, the liability of the insurance company would be unlimited and the insurance company was liable to meet out all third party liability claims and cannot avoid its liability to pay the awarded amount to the claimants. In this view of matter, finding recorded by learned Tribunal restricting liability of insurer only to Rs.50,000/- in instant case is not legally sustainable because once indisputably, premium charged was of Rs.240/- which covered liability to public risk which is higher than the "Act only" premium of Rs.200/-, liability of insurer would be unlimited and it cannot avoid liability to pay amount to claimants under Award impugned.

However, as regards quantum of compensation awarded by Tribunal, in my opinion, keeping in view date of accident, age of claimant (injured) and so also nature of injuries sustained by her as is evident from Ex.34/1 and so also statement made by Dr. Mamta Lahori Sinha (Aw1), what has been finally awarded by Tribunal as lump sum compensation being just, does not require enhancement.

Consequently, this appeal fails and is hereby dismissed. Record be sent back to concerned Tribunal.

(Ajay Rastogi), J.

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merely charging of higher or even taking a comprehensive policy does not necessarily cover the third party risk to the unlimited extent unless terms of the policy so provide for. -